

REMARKS

1. Examiner's Interview

The undersigned attorney appreciates the telephonic interview provided by Examiner Schillinger on November 3, 2009 to clarify the §102(b) rejections of the prior Office Action. In accordance with the interview, the undersigned attorney's understanding is that U.S. Patent 5,330,500 to *Song* is applied as follows (using claim 1 as an example):

a tubular graft having a first stent section [**42 OR 44**] comprising reinforcing material formed into a first pattern and a second stent section [**20**] comprising reinforcing material formed into a second pattern, the first pattern being different from the second pattern,

wherein the reinforcing material of the first pattern [**42 OR 44**] is disposed on the tubular graft in a pattern which oscillates [**circumferentially**] about a line which is parallel to the longitudinal axis of the tubular graft,

and wherein the reinforcing material of the second pattern [**20**] includes separate spaced circumferential hoops extending circumferentially around the longitudinal axis of the tubular graft [i.e., **the hoops are situated such that the planes of the hoops are overlaid on the circumference of the Song graft, with such "circumferential hoops extending circumferentially around the longitudinal axis"**],

the tubular graft having a first diameter in the region of the first stent section and a second diameter in the region of the second stent section,

wherein the first diameter is different from the second diameter.

While the Office Action refers to "first stent section (42, 44)" in *Song*, and the "Response to Arguments" at page 6 of the Office Action can be read as implying that *both* of sections 42 and 44 in *Song* are *collectively* regarded as being "the first stent section" (as claimed), it is the undersigned attorney's understanding that *either* of sections 42 and 44 in *Song* are regarded as being the "first stent section," not *both* of sections 42 and 44 (in combination).

2. The Amendments and the Support Therefor

One claim (29) has been canceled, eight new claims (31-38) have been added, and claims 1, 11, and 21 have been amended to leave claims 1-12, 21-28, and 30-38 in the application. Payment for any newly-submitted claims in excess of the amount previously paid for should accompany this Response, as per 37 CFR §1.16(b)-(d), with the fee due being calculated as follows:

FEE CALCULATION

For	Already Paid	No. Extra	Rate (SMALL ENTITY)	Fee (SMALL ENTITY)
Total Claims	29 - 22 =	7	x \$26 =	\$182
Independent Claims	3 - 3 =	0	x \$110 =	\$0
			Total:	\$182

No new matter has been added by the amendments or new claims, wherein:

- ***Independent claims 1, 11, and 21*** have been amended to better specify the scope of the invention, with the claims being clearly supported by **FIG. 1** (see below).
- New claim 31, dependent on claim 21, finds support in claim 29 (now canceled).
- New claim 32, dependent on claim 31, finds support in claim 1.
- New claims 33-38 find support in **FIG.1** (see below).

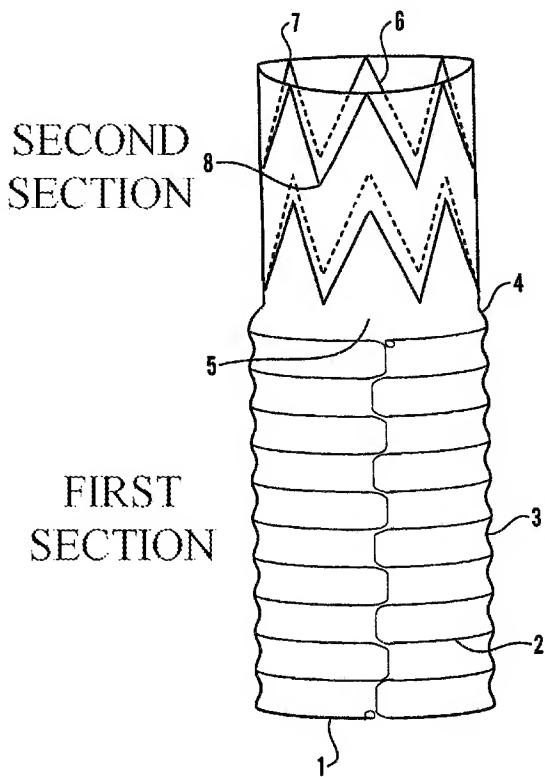


Fig. 1

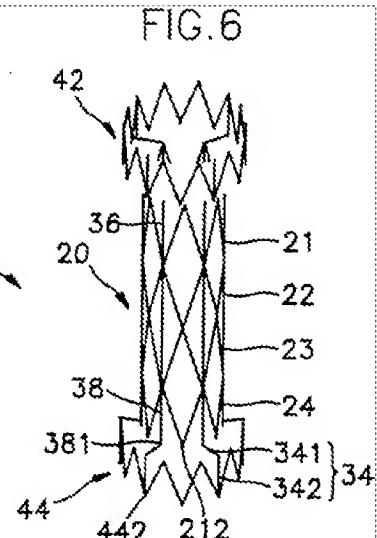
3. Rejection of Claims 1, 4-7, 9, 11, 21, 23, 24, and 27-29 under 35 USC §102 in view of U.S. Patent 5,330,500 to Song

It is initially useful to discuss a topic reviewed in the interview, since some confusion remains regarding the issue of whether the Office is regarding sections 42 and 44 – taken *in combination* – as being a “stent section.” As noted above, it is the undersigned attorney’s understanding that the Office’s true position is that *either* of sections 42 and 44 in *Song* are regarded as being the “first stent section,” not *both* of sections 42 and 44 (in combination). However, some of the language at page 6 of the Final Office Action seems to contradict this position:

The Applicant contends that elements 42 and 44 of the *Song* reference may not be considered to be the “first stent section” of the claimed invention. The examiner respectfully disagrees. The term “section” is being interpreted according to the following definition: “a distinct part or subdivision of anything” (section. Dictionary.com. Dictionary.com Unabridged (v 1.1). Random House, Inc. <http://dictionary.reference.com/browse/section> (accessed: September 29, 2009)). The claim language does not specify the locations of the first and the second sections, and the transitional phrase “comprising” is open-ended and thus allows there to be more elements than those claimed. Therefore, it would be reasonable to include both sections 42 and 44 as a particular stent section.

However, regarding *both* of sections 42 and 44 of *Song* (in combination) as being the “first stent section” is contrary to common understanding: a “section” would not be regarded as two spaced and distinct parts (which, as per the Office Action’s own arguments, are separated by another distinct section 20). Such an interpretation is contrary to the dictionary definition provided by the Office Action (which calls for a “distinct part or subdivision,” not plural parts or subdivisions), and is also contrary to the dictionary definitions provided in the last Response. It may be a broad interpretation to regard *both* of sections 42 and 44 of *Song* (in combination) as being a “first stent section,” but it is not a reasonable interpretation, and is thus contrary to MPEP 2111 *et seq.*

In any event, it is the undersigned attorney’s understanding from the Interview that the Office’s true position is that *either* of sections 42 and 44 in *Song* are regarded as being the “first stent section,” not *both* of sections 42 and 44 (in combination), and the following comments will proceed on this understanding.



Independent claim 1 is not anticipated by *Song* for at least the following reasons. Initially, claim 1 recites that the pattern of the first section both extends along, and oscillates about, a line which is parallel to the longitudinal axis of the tubular graft. *Song* does not have this: the pattern in either (or both) of *Song*'s sections 41 and 44 may oscillate circumferentially / orbitally about a line parallel to the longitudinal axis of the tubular graft, but it does not extend along such a line, and rather extends along a line perpendicular to such a line.

Further, *Song* does not have a second pattern with separate spaced circumferential hoops extending circumferentially around the longitudinal axis of the tubular graft. *Song*'s hoops 21, 22, 23, 24 touch, rather than being “separate” and “spaced.” It is understood from the interview that *Song* is regarded as having separate and spaced hoops such as (for example) 21 and 23, which are separated and spaced by hoop 22, but claim 1 requires that each hoops be separate and spaced from other hoops, and *Song* does not have this.

Independent claim 11 is not anticipated by *Song* for at least the following reasons. Initially, neither of sections 42 and 44 of *Song* (taken separately or together) constitute a first section as recited, with reinforcing material extending along and oscillating about a line parallel to the longitudinal axis. Further, even if section 20 of *Song* was regarded as such a first section, it also includes a pattern oscillating about a line running circumferentially around the longitudinal axis, contrary to clause i of claim 11.

Independent claim 21 is not anticipated by *Song* for the same reasons as claim 11, discussed above.

Dependent claims 4-7, 9, 23, 24, and 27-29 are submitted to be allowable for at least the same reasons as their parent claims 1, 11, and 21.

4. Rejection of Claims 2, 3, 10, 12, 25, 26, and 30 under 35 USC §103(a) in view of U.S. Patent 5,330,500 to Song and U.S. Patent 6,338,739 to Datta

These claims are submitted to be allowable for at least the same reasons as their parent claims. Additionally, claims 10 and 30, which recite the use of a spacer section spacing the first and second sections and lacking reinforcing material, are unobvious in view of *Song* and *Datta*, which neither show nor suggest any such arrangement. Further, no ordinary artisan would contemplate modifying *Song* to include this feature since *Song* repeatedly emphasizes the use of reinforcing structure along the entire length of the *Song* stent, and there is no apparent reason why *Song* would use a spacer

section as recited.

5. Rejection of Claims 8 and 22 under 35 USC §103(a) in view of U.S. Patent 5,330,500 to Song and U.S. Patent 6,254,632 to Wu et al.

These claims are submitted to be allowable for at least the same reasons as their parent claims.

6. New Claims 31-38

These claims are submitted to be allowable because the features recited therein are not present in *Song*, and it is not seen why an ordinary artisan would truly contemplate modifying *Song* to meet these claims.

7. In Closing

If any questions regarding the application arise, please contact the undersigned attorney. Telephone calls related to this application are welcomed and encouraged. The Commissioner is authorized to charge any fees or credit any overpayments relating to this application to deposit account number 18-2055.

For the Applicant,



Craig A. Fieschko, Reg. No. 39,668
CUSTOMER NO. 25005
DEWITT ROSS & STEVENS S.C.
2 E. Mifflin St., Suite 600
Madison, WI 53703-2865
Telephone: (608) 395-6722
Facsimile: (608) 252-9243
cf@dewittross.com